IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 283 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANJIBHAI T TANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 283 of 2001

MR MM TIRMIZI for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2002

ORAL JUDGEMENT

The petitioner above named is the original informant in Criminal Case No.17/94 before the learned

Addl.Chief Judicial Magistrate, Valsad. By judgment and acquittal order dated 16.10.2000, the learned Addl.Chief Judicial Magistrate acquitted the second respondent-original accused from the offences punishable under sections 408 and 477-A of Indian Penal Code.

2. It was alleged against the contesting respondent that the contestiang respondent was appointed as Manager in the Valsad District Panchayat Employees Cooperative Society in accordance with Resolution dated 6.10.1975 of the Managing Committee of the said Cooperative Society. Accordingly, he worked there in the said capacity as Manager of the Cooperative Society between 1980-81. It is alleged against him that it was his function and duty to keep cash on hand and to see that the accounts were properly maintained. The account of the said Cooperative Society was audited for the year 1980-81 and during the course of the said audit, it was noticed that there was misappropriation of fund and, therefore, enquiry was conducted and at the end of the enquiry, it was noticed that the present petitioner had committed criminal misappropriation of the cash amount of the said Society. It was also alleged against him that he made wrong entries in the books of accounts of the said Society and committed the aforesaid offence. After the FIR was lodged before the police station, investigation was undertaken and charge sheet was filed. The trial court conducted the trial and at the end of the trial, the learned Magistrate found that there was no sufficient evidence against the contesting respondent and, therefore, by judgment and order dated 16.10.2000, the learned Addl.Chief Magistrate acquitted contesting respondent No.2 of the said charge. Feeling aggrieved by the said judgment and acquittal order of the learned Addl.Chief Magistrate, Valsad, the petitioner, being the original informant, brought this Revision Application before this Court. The petitioner has contended in this revision application that the learned Magistrate has committed illegality in appreciation of evidence on record. That there was sufficient material on record to hold that the contesting respondent is not guilty of the offence as alleged. The learned Magis[trate has omitted and overlooked the said evidence and, therefore, serious illegality has been committed and, therefore, the judgment and acquittal order are illegal and perverse. It, therefore, is prayed that the said judgment and acquittal order of the learned Magistrate may be set aside.

3. Since the revision application has been filed late, the petitioner had filed Criminal Misc.Application

being Criminal Misc.Application No.5409 of 2001 for condoning the delay. After hearing the parties, the delay in filing the revision application was condoned. Therefore, the matter is on board for hearing and admission.

4. I have heard learned Advocate for the petitioner and Mr B D Desai, learned APP for the State. Mr M M Tirmizi, learned Advocate for the petitioner has argued that there was sufficient material on record but the trial court has not appreciated the same appropriately and, therefore, the case has resulted into acquittal of the contesting respondent. The learned Magistrate has, in fact, considered the entire material before him. However, he has noticed that the records of the Society had been damaged and, therefore, documentary evidence could not be produced by the society and by the prosecution. On going through the records, it is found that the said observations and findings of the learned Magistrate are not wrong or false. It is noticed that the records have been damaged to a great extent and, therefore, the entries in the record could not be produced and proved. Now, simply because the entries could not be produced or proved on record, the accused cannot be held guilty. It is the duty of the prosecution to prove its case beyond reasonable doubt against the accused. If the prosecution fails to prove the charge against the accused persons beyond reasonable doubt, even on account of damage being caused to the books of accounts and other materials, the accused cannot be blamed and he cannot be convicted for want of evidence on the aforesaid consideration.

5. On going through the record, it is clear that the learned Magistrate has not committed any illegality in appreciation of evidence before him. However, he was helpless when the evidence could not be brought on record. At the same time, the petitioner and the prosecution and Investigating Agency all appear to be helpless since the materials could not be produced before the trial court for proving the case against the contesting respondent. In above view of the matter, there was no material before the trial court for holding the contesting respondent guilty and it cannot be said that the learned Magistrate has committed illegality in acquitting him. In that view of the matter, the judgment and acquittal order of the learned Magistrate cannot be treated to be illegal and perverse. If the judgment and acquittal order of the learned Magistrate are not found to be illegal and perverse, then in that event, it would not be open to this Court to interfere with them.

For the foregoing reasons, there is no merit in the present Revision Application and the same is accordingly dismissed.

24.1.2002 [D P Buch, J.]
msp